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Pet. re:
Restriction
10/23/01

In re Patent Application of

Atty Dkt. 2035-38

C# M#

HIGHFIELD et al

Group Art Unit: 1648

Serial No. 09/664,363

Examiner: Li, B.

Filed: September 18, 2000

Date: September 20, 2001

Title: VIRAL AGENT

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

ALTERNATE PETITION UNDER RULE 181

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

Fees are attached as calculated below:

Total effective claims after amendment 0 minus highest number
previously paid for 20 (at least 20) = 0 x \$ 18.00 \$ 0.00

Independent claims after amendment 0 minus highest number
previously paid for 3 (at least 3) = 0 x \$ 80.00 \$ 0.00

If proper multiple dependent claims now added for first time, add \$270.00 (ignore improper) \$ 0.00

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) (\$110.00/1 month; \$390.00/2 months; \$890.00/3 months) \$ 0.00

Terminal disclaimer enclosed, add \$ 110.00 \$ 0.00

☐ First/second submission after Final Rejection pursuant to 37 CFR 1.129(a) (\$710.00) \$ 0.00

☐ Please enter the previously unentered, filed

☐ Submission attached

Subtotal \$ 0.00

If "small entity," then enter half (1/2) of subtotal and subtract -\$ 0.00

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee (\$180.00) \$ 0.00

Assignment Recording Fee (\$40.00) \$ 0.00

Other: 0.00

TOTAL FEE ENCLOSED \$ 0.00

The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.
By Atty: Mary J. Wilson, Reg. No. 32,955

Signature: Mary J. Wilson

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OFFICE OF PETITIONS



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HIGHFIELD et al

Atty. Ref.: 2035-38

Serial No. 09/664,363

Group:

Filed: September 18, 2000

Examiner:

For: **VIRAL AGENT**

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* * * * *

September 20, 2001

Assistant Commissioner for Patents
Washington, DC 20231

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Sir:

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ALTERNATE PETITION UNDER RULE 181

For the reasons described below, Applicants hereby petition the Commissioner to invoke his supervisory authority and have the Restriction Requirement of April 20, 2001 (Paper Number 4) restated (reformulated), in the event the Examiner refuses to do the same as requested in the attached Response.

The attached Response should be construed as a Request for Reconsideration, as required by Rule 181, in the event the Examiner refuses to restate the Restriction Requirement, as requested in the attached Response.

The following is a statement of facts, as required by Rule 181(b), and point or points to be reviewed and the action requested.

The Examiner has indicated that restriction to a single sequence is required as each sequence within the scope of Groups I and III-VIII represents a separate invention. Clearly, at a cost of approximately \$710 per application in filing fees alone, the burden

placed on Applicants to pursue each of the allegedly separately patentable and distinct sequences is grossly unfair.

The Examiner's requirement for restriction between each of the sequences of the claims fails to comply with at least the spirit of the Commissioner's Notice of November 19, 1996. The Commissioner indicated in that Notice that the Patent Office was attempting to strike a balance between aiding the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office. To that effect, the Patent Office had determined that, in most cases, up to ten independent and distinct sequences would be examined in a single application without restriction. The Commissioner is requested to invoke his supervisory authority and withdraw the Restriction Requirement of April 20, 2001 and restate the Restriction Requirement in a new Office Action, providing further time for Applicants to respond, which complies more closely with the attached Notice.

Grant of the present Petition is requested. No fee is believed required for consideration of the present paper as the present Alternate Petition need only be considered in the event the Examiner has erred in failing to restate the Restriction Requirement of April 20, 2001 in a new Restriction Requirement, as requested in the attached Response. The Office is authorized however to charge the undersigned's Deposit Account, by the attached cover sheet, if the Commissioner deems otherwise.

HIGHFIELD et al
Serial No. 09/664,363

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Mary J. Wilson
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